

SEALED BY ORDER
OF THE COURT

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RECEIVED

AUG - 3 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

FILED

AUG -5 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA *ex rel.*
TOMIYA GAINES,

Plaintiffs,

v.

STANFORD HEALTH CARE, et al.,
Defendants.

Case No. C 15-05631 KAW

UNITED STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION; ~~PROPOSED~~
ORDER TO UNSEAL

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the

1 action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel.*
2 *Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

3 Therefore, the United States requests that, should either the relator or the defendants
4 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
5 United States with notice and an opportunity to be heard before ruling or granting its approval.

7 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
8 pleadings filed in this action be served upon the United States. The United States also requests
9 that orders issued by the Court be sent to the government's counsel. The United States reserves
10 its rights to order any deposition transcripts and to intervene in this action, for good cause, at a
11 later date, and to seek dismissal of the relator's action or claim. See 31 U.S.C. § 3730(c)(2), (3).
12 The United States also requests that it be served with all notices of appeal.

14 Finally, we request that the Court unseal: (1) relator's Complaint; (2) the summons, if
15 any; (3) the scheduling order; (4) this Notice of Election to Decline Intervention, with (Proposed)
16 Order to Unseal; and (5) all other matters occurring in this action after the date the Court enters
17 the unsealing order. We request that all other contents of the Court's file in this matter
18 (including, but not limited to, any applications filed by the United States for extensions of the
19 sixty-day investigative period, any applications for partial lifting of the seal, and any orders
20 previously entered in this matter) remain under seal and not be made public or served upon
21 defendants.
22

24 Respectfully submitted,

25 BRIAN J. STRETCH
United States Attorney

26 Dated: August 3, 2016

27 By:



28 SARA WINSLOW

Assistant United States Attorney

Attorneys for the United States of America

~~[PROPOSED]~~ ORDER TO UNSEAL

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows.

IT IS HEREBY ORDERED that:

1. All current contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendants, except for (1) relator's Complaint; (2) the summons, if any; (3) the scheduling order; (4) this Order; and (5) the accompanying United States' Notice of Election to Decline Intervention, which are hereby unsealed.

2. The relator shall serve the Complaint upon the defendants.

3. The relator shall serve this Order and the accompanying Joint Notice of Election to Decline Intervention upon the defendants after service of the Complaint.

4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

6. The parties will provide the United States a copy of the notice or petition initiating any appeal and each paper, including briefs, filed in the appeal.

7. All orders of this Court shall be sent to the United States.

8. Should the relator or the defendant(s) propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: 8/5/16



KANDIS A. WESTMORE
United States Magistrate Judge

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for
 3 the Northern District of California and is a person of such age and discretion to be competent to serve
 4 papers. The undersigned further certifies that she is causing a copy of the following to be served this
 5 date upon each of the persons indicated below at the address(es) shown::

6 **UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED]**
 7 **ORDER TO UNSEAL**

8 United States of America ex rel. Tomiya Gaines, v. Stanford Health Care et al
 9 C 15-05631 KAW (Under Seal)

10 Kevin A. Seely
 11 Robbins Arroyo LLP
 12 600 B St., Suite 1900
 13 San Diego CA 92101

13 ☒ **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with
 14 postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance
 15 with this office's practice.

16 ☐ **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid
 17 in the designated area for outgoing U.S. mail in accordance with this office's practice.

18 ☐ **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be
 19 delivered by hand to the person or offices of each addressee above.

20 ☐ **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the
 21 person or offices of each addressee above.

22 ☐ **BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices
 23 of each address above

24 ☐ **BY FEDERAL EXPRESS**

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
 26 true and correct. Executed August 3, 2016 at San Francisco, California

27 
 28 KATHY TERRY
 Legal Assistant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel.
TOMIYA GAINES,

No. C 15-5631 KAW

Plaintiff(s),

CERTIFICATE OF SERVICE

v.

STANFORD HEALTH CARE, ET AL,

Defendant(s).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 5, 2016, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

Kevin Andrew Seely
Robbins Arroyo LLP
600 B Street, Suite 1900
San Diego, CA 92101

Sara Winslow
Assistant US Attorney
450 Golden Gate Ave., Box 36055
San Francisco, CA 94102

SUSAN Y. SOONG, CLERK

BY: 
Susan Imbriani, Courtroom Deputy